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July 30, 2004

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: D.T.E. 03-60

Dear Ms. Cottrell:

MCI, Inc.("MCI") respectfully submits the following responses to the briefing questions posed by the Department in its June 15, 2004 letter order in this proceeding.

- *When the vacatur takes effect, what are Verizon's obligations with respect to mass market switching, UNE-P, high capacity loops, and dedicated transport under applicable federal law, giving effect to any change of law provisions in carriers' interconnection agreements? What is the appropriate role for the Department, if any, under federal law when the vacatur takes effect?*

Verizon is obligated to comply with its obligations under its DTE-approved interconnection agreements, which agreements were negotiated (or arbitrated), approved and are enforceable by the Department under sections 251 and 252 of the Communications Act. Contrary to what Verizon may argue, the *USTA II* decision **did not** free Verizon of its unbundling obligations under section 251 of the Communications Act. Furthermore, *USTA II* did

not make any findings of non-impairment with respect to particular unbundled network elements where the FCC had found impairment to exist. Indeed, the *USTA II* court declined to adopt the broad relief sought by Verizon, *i.e.* a transition plan to do away with UNE-P if the FCC failed to adopt new unbundling rules within 45 days of the Court's decision.

The *USTA II* decision did not alter Verizon's obligations under its interconnection agreements with MCI and other CLECs, including its obligations to adhere to contractual change of law provisions. Indeed, Verizon is well aware of the limited legal effect of the issuance of the mandate by the D.C. Circuit. The Department needs to look no further than the exchange between Verizon's counsel and the bench at oral argument before the D.C. Circuit. Verizon's counsel acknowledged on the record that a decision by the Court would not relieve Verizon of its obligations under its interconnection agreements. Verizon knows that the *TRO* is not self-effectuating, as the FCC clearly stated in its order. *TRO*, par. 701. Why else has Verizon filed a petition for consolidated arbitration with the Department to implement the purported changes in law required by the FCC's *TRO*?

In the absence of new rules from the FCC, we do not yet know what the new law is and to what extent there has been a change in law triggering the change in law provisions of interconnection agreements between Verizon and CLECs. Thus, even if we were to assume that the issuance of the mandate by the D.C. Circuit was a triggering "change of law" event, it would be wasteful to go through the interconnection agreements' change of law process until new rules are in place. The change of law provisions in the interconnection agreements are designed to handle the transition from old law to new law. Right now, there is no new law and it would be

disruptive and wasteful to invoke "change of law" at this stage only to re-invoke it six months from now to implement new UNE rules when the FCC completes its work.

- *In the absence of effective federal unbundling regulations under Section 251 applicable to mass market circuit switching, UNE-P, high capacity loops, and dedicated transport:*
    - *What are Verizon's obligations to provide such UNEs under Massachusetts law?*

The Department may exercise its authority under state law and under section 251 (d)(3) of the Communications Act to require Verizon to continue providing UNEs and UNE Combinations at TELRIC rates. Neither the FCC nor the *USTA II* court made findings of non-impairment with respect to mass market switching, high capacity loops or dedicated transport. In the absence of federal findings of non-impairment, the states have full authority to require unbundling as a matter of state law. The Department's long standing policy of facilitating the evolution of competition in telecommunications markets in Massachusetts serves as the appropriate legal basis for the Department to mandate a continuation of unbundling obligations as a matter of state law. The Department has consistently endorsed competitive telecommunications markets as the best method for promoting its policy goals for the industry. IntraLATA Competition, D.P.U. 1731, at 25 (1985). In its order in D.T.E. 01-31, the Department stated:

> [In D.P.U. 1731] The Department determined that while simulation of the results of a competitive market is a principal goal of regulation, actual competitive telecommunications markets are preferable to regulation as a surrogate for competition…. The Department endorsed competitive markets over regulation as the best way to achieve its policy goals for telecommunications, because competitive markets promote economic efficiency, technological innovations, and a greater sensitivity to customer demands….(citations omitted).

D.T.E. 01-31, Phase II, April 11, 2003, p.7. Mandating under state law the continued provisioning of UNEs and UNE Combinations at TELRIC rates would be fully consistent with the Department's policy goals.

- *Do Verizon's obligations as carrier of last resort require it to offer UNEs? See Intra-LATA Competition, D.P.U. 1731, at 76 (1985).*

MCI takes no position on this issue. MCI believes that other sources of state law authority are sufficient to require Verizon to offer UNEs and UNE Combinations at TELRIC rates in the absence of effective FCC rules.

- *Do the terms of Verizon's Alternative Regulation Plan indirectly require it to continue providing mass market switching, UNE-P, dedicated transport, and high-capacity loops at TELRIC rates, and if so, what would be the consequences should Verizon discontinue providing any of the above TELRIC based rates?*

Yes. The Department's decision in D.T.E. 01-31 to grant Verizon additional retail pricing flexibility assumed the existence of competition from, among others, competitors who use UNEs and UNE Combinations to offer local service in competition with Verizon. D.T.E. 01-31, Phase I, May 8, 2002, pp. 91-92. If the marketplace conditions assumed by the Department were to change because of a decision by Verizon to discontinue the offering of UNEs and UNE Combinations at TELRIC rates, the Department can reasonably conclude that a re-opening of Verizon's Alternative Regulation Plan is warranted. As part of that process, the Department could (and should) impose upon Verizon an obligation to continue offering UNEs and UNE Combinations at TELRIC rates as a condition of maintaining the current plan or otherwise

forbearing from re-instituting rate-of-return regulation of Verizon's Massachusetts' intrastate operations.

- *If carriers reach agreement on terms for mass market circuit switching, may or must those agreements be filed with the Department as interconnection agreements for approval under 47 U.S.C. § 252? May or must those agreements be filed with the Department for approval as customer specific arrangements? See AT&T Communications of New England, Inc., D.P.U. 90-24 (1990). Would such terms be subject to the federal pick and choose rule? 47 U.S.C. § 252(i).*

So called "commercial agreements" must be filed for approval with the Department as voluntary agreements under section 252 (a)(1) of the Communications Act. Such agreements are fully subject to the requirements of section 252 (i) of the Communications Act.

- *Should the Department establish a transition plan to replace TELRIC-based rates for mass market circuit switching, UNE-P, high capacity loops, and dedicated transport with just and reasonable market-based ates, as has been proposed in other states, such as New York, and if so, what should be the parameters of such a plan? See, e.g. In the Matter of Telecommunications Competition in New York Post USTA II Including Commitments Made in Case 97-C-0271, N.Y.P.S.C. Case 04-C-0420. What authority would the Department have to do so?*

No. MCI urges the Department to preserve the status quo by allowing the FCC to adopt interim and permanent UNE rules.

- *Should the Department proceed with a separate hot cuts investigation under state law? If so, may the record already compiled in D. T.E. 03-60 be incorporated into such a proceeding? Would the scope of such an investigation and standard of review of proposed hot cut processes be different from the investigation in D.T.E. 03-60?*

Yes. The Department should move forward with removing all economic and operational impediments to the use of unbundled loops. The record in D.T.E. 03-60 can serve as the starting point for developing a record for an investigation.

- *What are Verizon's obligations pursuant to its wholesale tariff?*

Verizon must continue to offer its wholesale services set forth in its tariff, at the rates set forth therein, until the Department approves changes to the tariff.

- *What steps, if any, should the Department take to encourage carriers to enter voluntarily into agreements with respect to mass market circuit switching, UNE-P, high capacity loops, and dedicated transport that promote efficiency, fairness, rate continuity, and earnings stability for all parties?*

MCI does not believe that Department intervention into the negotiations over commercial agreements is necessary.

- *Should the Department seek a declaratory ruling from the FCC as to whether the BA/GTE Merger Order requires Verizon to continue to provide mass market switching, UNE-P, dedicated transport, and high capacity loops at TELRIC?*

No. MCI believes that the Merger Order requirements are clear. Verizon contends otherwise. Verizon, not the Department, should be the party seeking relief from the FCC.

- *Is the D.C. Circuit Court's decision in USTA II a "change of law" affecting carriers' existing interconnection agreements?*

No. The release of interim, and later, permanent UNE rules by the FCC will constitute "changes in law" under existing interconnection agreements. As stated above, the change of law provisions in Verizon's interconnection agreements are designed to handle the transition from old law to new law. At the present time, there are no UNE rules in effect. Recent press reports about actions taken by the FCC confirm that interim rules will soon be in effect. At that time, it will be appropriate to invoke change of law procedures in applicable interconnection agreements.

- *Does § 271 of the Telecom Act require Verizon either directly or indirectly, by virtue of the trade-offs under the Act, to continue to provide de-listed UNEs at TELRIC?*

Yes. MCI believes that such an interpretation is compelled by the language of the Telecommunications Act and is fully consistent with the intent of the Congress.

Respectfully submitted,

Richard C. Fipphen

Cc: Service List (by e-mail)